

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SLADE GORTON & CO., INC.,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 05-11366-MLW
)	
ANTONIO BARILLARI, S.A.)	
)	
Defendant.)	
)	

SLADE GORTON & CO. INC.'S MOTION FOR DEFAULT JUDGMENT

Pursuant to Fed. R. Civ. P. 55(b), Plaintiff Slade Gorton & Co., Inc. ("Slade Gorton") hereby moves for the entry of default judgment against defendant Antonio Barillari, S.A. ("Barillari") that includes: an award of \$650,000 in compensatory damages, a declaration that Barillari's claims for amounts allegedly owed are without merit, an award of attorney fees and costs of \$102,440.98, and an award of an amount up to three times Slade Gorton's actual damages.

As grounds for this motion, Slade Gorton refers to the accompanying memorandum in support of this Motion, and states as follows:

1. On June 28, 2005, Slade Gorton filed its complaint in this action for breach of contract and declaratory judgment. Slade Gorton seeks payment for breach of a promissory note in the principal amount of \$650,000. Slade Gorton also seeks a declaration that Barillari's claim that Slade Gorton owes Barillari \$7,673,032.27 is without merit as it is inconsistent with the agreement between the parties and their course of dealing over several years. Finally, Slade Gorton seeks a judgment that Barillari has violated Mass. Gen. Law. Ch. 93A, the Massachusetts Consumer Protection Law, and therefore, seeks damages thereunder for its attorneys and costs plus an amount not less than two nor more than three times Slade Gorton's actual damages.

2. Despite having been properly served and having taken actions in Argentina with respect to this matter (*see* Returned Summons, docket entry #10, January 19, 2007), Barillari has failed to appear and defend this action.

3. A default was entered by this Court on April 9, 2007.

4. A default judgment may properly be entered against defendant Barillari, which is, on information and belief, a corporation organized and existing under the laws of Argentina, with its principal place of business at Hipolito Yrigoyen 723, C1086AAK, Buenos Aires, Argentina, and is neither an infant nor an incompetent person.

WHEREFORE, Slade Gorton respectfully requests that the Court enter a judgment by default in favor of Slade Gorton and against Barillari for:

- (a) \$650,000;
- (b) a declaration that the arrangement between Slade Gorton and Barillari was a consignment arrangement, that Slade Gorton has satisfied its obligations to Barillari under that arrangement, and that Slade Gorton does not owe Barillari the amounts now claimed by Barillari;
- (c) an amount up to three times Slade Gorton's actual damages pursuant to Mass. Gen. Laws ch. 93A §§ 2 and 11;
- (d) prejudgment interest on Slade Gorton's pecuniary damages at the rate of 12% per annum pursuant to Mass. Gen. L. Ch. 231 §6C;
- (e) attorney fees in the amount of \$97,995.50 and costs of \$4,445.48 pursuant to Mass. Gen. Laws ch. 93A §§ 2 and 11; and
- (f) such further or other relief as the Court deems just and proper.

For the Court's convenience, and in compliance with the Court's Standing Order Regarding Motions for Default Judgment, Slade Gorton has attached a proposed order as Exhibit A hereto.

Respectfully submitted,

SLADE GORTON & CO.
By its attorneys,

Dated: May 9, 2007

/s/ Clarence H. Brown

Jeffrey S. King (BBO No. 559000)
jeffrey.king@klgates.com
Clarence H. Brown (BBO No. 665534)
clarence.brown@klgates.com
KIRKPATRICK & LOCKHART
PRESTON GATES ELLIS LLP
State Street Financial Center
One Lincoln Street
Boston, MA 02111
(617) 261-3100

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent, via First Class mail, postage prepaid, to those non-registered participants on the 9th day of May, 2007.

/s/ Clarence H. Brown

Clarence H. Brown

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SLADE GORTON & CO., INC.,

Plaintiff,

CIVIL ACTION NO. 05-11366-MLW

v.

ANTONIO BARILLARI, S.A.

Defendant.

[PROPOSED] DEFAULT JUDGMENT

WOLF, D.J.

Defendant Antonio Barillari, S.A., having failed to plead or otherwise defend in this action and its default having been entered,

Now, upon application of plaintiff and affidavits demonstrating that defendant owes plaintiff the sum of \$650,000, that defendant is not an infant or incompetent person or in the military service of the United States, and that plaintiff has incurred attorney fees and costs in the sum of \$102,440.98.

It is hereby ORDERED, ADJUDGED AND DECREED that plaintiff recover from defendant Antonio Barillari, S.A. the principal amount of \$650,000, which amount is to be trebled to a total of \$1,950,000, plus attorney fees and costs in the amount of \$102,440.98, and prejudgment interest on the principal amount at the rate of twelve percent (12%) per annum from July 31, 2004 to May 9, 2007 in the amount of \$214,553.36, for a total judgment of \$2,916,994.20, with post-judgment interest as provided by law.

By the Court,

Dated: _____

Deputy Clerk

NOTE: The post-judgment interest rate effective this date is 4.94%.